

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Statesville Division

CROWN EQUIPMENT CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 5:23-cv-00059-KDB-DCK
)	
DAVID BRADY, <i>et al.</i> ,)	
)	
Defendants.)	
)	
DAVID BRADY, <i>et al.</i> ,)	
)	
Third-Party Plaintiffs,)	
)	
v.)	
)	
JAMES ANDREWS AND)	
JERRY TROSTLE,)	
)	
Third-Party Defendants.)	

MOTION FOR LEAVE TO FILE NEW PLEADING

Defendants, David Brady (“Brady”), William Tucker (“Tucker”), Brawtus Holding Company, Inc. (“Brawtus Holding”), and Brawtus Management Company, LLC (“Brawtus Management”), hereinafter referred to collectively as the “Brady/Tucker Defendants”, pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, hereby move this Court for leave to file a new pleading, which will be a combined counterclaim, crossclaim, and third-party claim, asking only for declaratory judgment:

1. At the outset, it is important to note that both Pneu-Mech Systems Manufacturing, LLC (N.K.A. Pneu-Mech Dissolution, LLC) and Pneu-Mech Systems Manufacturing, Inc. (F.K.A. Pneu-Mech Holdings, Inc.) are dissolved North Carolina entities.
2. Plaintiff filed the Complaint (Document No. 1) on May 05, 2023.

3. Plaintiff properly served the Complaint (and appropriate Summons) on Brady, Tucker, Brawtus Holding, and Brawtus Management and those Parties do not dispute such service.

4. Plaintiff also served, or attempted to serve, Pneu-Mech Systems Manufacturing, LLC (k/n/a Pneu-Mech Dissolution, LLC) via David Brady, as he was the last registered of agent of record according to the North Carolina Secretary of State (Document No. 14).

5. Later, on April 18, 2024, Brady, Tucker, Brawtus Holding, Brawtus Management, and, in a limited fashion, Pneu-Mech Systems Manufacturing, LLC, filed an Answer (Document No. 56) to the Complaint.

6. The Brady/Tucker Defendants thereafter also filed a Crossclaim (Document No. 57 subsequently amended at Document No. 77) against Pneu-Mech Systems Manufacturing, Inc., and a Third-Party Claim (Document No. 63, subsequently amended at Document Nos. 86 & 107) against James Andrews and Jerry Trostle.

7. The Brady/Tucker Defendants answered the Complaint on Pneu-Mech Systems Manufacturing, LLC's, behalf in a limited fashion because, at the time, the ownership of that entity was not entirely clear.

8. Throughout the litigation—in particular, while reviewing and compiling documents responsive to Plaintiff's Request for Production of Documents to the Brady/Tucker Defendants—the Brady/Tucker Defendants' counsel discovered documents it believes clarifies the ownership structure of Pneu-Mech Systems Manufacturing, LLC, and confirms that the Brady/Tucker Defendants have and had no ownership or control over that entity since its sale in late 2017. On information and belief, such documents show that the membership interests of the entity were transferred to Pneu-Mech Systems Manufacturing, Inc., at that time.

9. The undersigned counsel has twice conferred with counsel for Pneu-Mech Systems Manufacturing, Inc.—once with Andrew Stein and once with Jarrod Summey—the same counsel that represents James Andrews and Jerry Trostle, the 100% shareholders of the Inc.), concerning this matter, but that counsel has declined to consent to a substitution of counsel.

10. The Brady/Tucker Defendants believe that Plaintiff, Pneu-Mech Systems Manufacturing, Inc., James Andrews, and Jerry Trostle are all proper parties to the proposed declaratory relief action. Plaintiff is the party that initially asserts, via its Complaint, that the Brady/Tucker Defendants are the parties responsible for Pneu-Mech Systems Manufacturing, LLC; Pneu-Mech Systems Manufacturing, Inc., is, on information and belief, the sole member of Pneu-Mech Systems Manufacturing, LLC, as of late 2017; and James Andrews and Jerry Trostle are the individual signatories that signed the legal documents effectuating and ratifying the membership interest transfer in late 2017 and are also the sole shareholders of Pneu-Mech Systems Manufacturing, Inc.

11. Based on the information before it, the Brady/Tucker Defendants' counsel does not believe it can legally or ethically continue representing Pneu-Mech Systems Manufacturing, LLC, in any capacity, including the limited capacity it has currently represented it is.

12. Without a consensual substitution of counsel, the undersigned believes the most effective and efficient way to determine whether it is the correct counsel to represent, in any capacity, Pneu-Mech Systems Manufacturing, LLC, is to present the evidence to the Court and pray for a judgement declaring that the Brady/Tucker Defendants, or any of them, are not or are the party/parties responsible for legally representing that entity

13. For these reasons, we believe that a separate, “ancillary” action for declaratory relief, including the aforementioned parties, would be the most effective and efficient way to

resolve this matter. The undersigned has attached a copy of the proposed pleadings, which, in turn, also includes exhibits that offer support for the pleading's allegations.

WHEREFORE, the Brady/Tucker Defendants respectfully request that this Court grant leave to file the attached proposed pleading.

Dated: October 31, 2024.

BY COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2024, I electronically filed the foregoing, along with a proposed order on the same, with the Clerk of the Court by using the CM/ECF system, which served the foregoing on the following counsel of record who are CM/ECF participants:

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